

REMARKS/ARGUMENTS

Claims 1, 4-11 and 13-33 are pending in the application. The Examiner has rejected claims 1, 4-11, 13-20, 26 and 27. The Examiner has objected to claims 21-25 and 28-33. Applicant respectfully requests reconsideration of claims 1, 4-11 and 13-33.

The Examiner clarifies that the last Office action, dated July 12, 2007, is non-final. However, Applicant notes the present Office action also states, on the Office Action Summary, "This action is non-final," but states, on page 6, "THIS ACTION IS MADE FINAL." As the Examiner alleges a new ground of rejection that Applicant submits is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclosure statement..., "Applicant understands the present Office action to also be non-final. If the Examiner considers the present Office action to be final, Applicant respectfully requests the Examiner withdraw finality of the present Office action in light of MPEP § 706.07(a).

The Examiner has rejected claims 1, 4-11 and 13-18 under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the enablement requirement. Applicant respectfully disagrees.

Applicant notes three previous non-final Office actions have been issued in the present application, yet Applicant submits none of them set forth a rejection under 35 U.S.C. § 112, first paragraph. As the pending claims remain either substantially as originally filed or have been amended to recite subject matter substantially recited in other claims as originally filed, Applicant submits the subject matter recited in the pending claims has been subject to examination in each of the three previous non-final Office actions, where no rejection was made alleging the claims to contain subject matter not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Accordingly, Applicant submits the specification describes the claimed subject matter in such a way not only to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention but also to enable to Examiner to understand how one skilled in the art would make and/or use the invention. Since the Examiner has not explained how the Examiner now concludes the claims contain subject matter not described in the specification in such a way as to enable one skilled in the art...to make and/or use the invention after apparently concluding the

opposite in the three previous Office actions, Applicant respectfully requests the Examiner withdraw the 35 U.S.C. § 112, first paragraph, rejection of claims 1, 4-11, and 13-18.

Regarding claim 1, as the Examiner notes, Applicant also notes claim 1 recites "...a plurality of transport interfaces operatively coupled to the service interface...the second service interface operatively coupled to the plurality of transport interfaces...." Applicant also notes the specification recites, for example, at page 12, line 27, through page 13, line 7, as follows:

Node 101 is coupled to node 102 and node 103. Specifically, transport interface 110 of node 101 is coupled to transport interface 111 of node 102 via coupling 128 and to transport interface 112 of node 103 via coupling 138. Transport interface 113 of node 101 is coupled to transport interface 114 of node 102 via coupling 129 and to transport interface 115 of node 103 via node 139. Transport interface 116 of node 101 is coupled to transport interface 117 of node 102 via coupling 130 and to transport interface 118 of node 103 via coupling 140. Transport interface 119 of node 101 is coupled to transport interface 120 of node 102 via coupling 131 and to transport interface 121 of node 103 via coupling 141.

Thus, Applicant submits the specification describes an example of "...a plurality of transport interfaces operatively coupled to the service interface...the second service interface operatively coupled to the plurality of transport interfaces...." While the Examiner states, "However, neither Fig. 1 nor the Specification discloses the same set of the plurality of transport interfaces shared by the service interface and the second service interface," Applicant submits the Examiner appears to be reading limitations into claim 1 that are not recited in claim 1. Applicant submits claim 1 is entitled to its broadest reasonable interpretation as per MPEP § 2111. Therefore, Applicant submits claim 1 is in condition for allowance.

Regarding claim 10, as the Examiner notes, Applicant also notes claim 10 recites "receiving the data packets at a service interface...routing the data packets to transport interfaces...receiving at a second service interface the data packets from the transport interfaces." Applicant notes the specification recites, for example, at page 22, line 20, through page 23, line 2, as follows:

In step 704, data packets are routed to transport interfaces associated with the classes of service and/or drop precedences. Thus, by maintaining an awareness of such associations, information pertaining to the classes of service and/or drop precedences can be effectively transmitted along the transport interfaces, for example, between service interfaces. Step 704 may also include step 709. In step 709, data packets are routed according to destination addresses associated with the data packets. While data packets are being routed along transport interfaces between a first service interface and a second service interface in step 704, step 705 is also performed. In step 705, differentiated service codepoint values associated with the data packets are preserved as the data packets are carried between the first service interface and the second service interface, inclusive.

From steps 704 and 705, the process continues to step 706. In step 706, a second service interface receives the data packets from the transport interfaces.

Thus, Applicant submits the specification describes an example of "receiving the data packets at a service interface...routing the data packets to transport interfaces...receiving at a second service interface the data packets from the transport interfaces." While the Examiner states, "However, neither Fig. 1 nor the Specification discloses the same set of the plurality of transport interfaces shared by the service interface and the second service interface," Applicant submits the Examiner appears to be reading limitations into claim 10 that are not recited in claim 10. Applicant submits claim 10 is entitled to its broadest reasonable interpretation as per MPEP § 2111. Therefore, Applicant submits claim 10 is in condition for allowance.

The Examiner has rejected claims 1, 4-9 under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter. Applicant respectfully disagrees.

Regarding claim 1, Applicant notes claim 3, as originally filed, previously recited "a second differentiated service profile operatively coupled to the second service interface" and depended indirectly from claim 1, which recited "a differentiated service profile associated with the service interface." Yet Applicant notes no 35 U.S.C. § 112, second paragraph, rejection was ever made with respect to such aspect of claim 3 in any of the previous three Office actions despite another aspect of claim 3 having been subject to a 35 U.S.C. § 112, second paragraph, rejection. Applicant submits that since the aspect of claim 1 which the Examiner now alleges is "unclear" was previously present in the claims and apparently never affected the Examiner's understanding of such aspect or the Examiner's ability to examine a claim reciting such aspect for three previous Office actions, such aspect could not have suddenly become "unclear" and "indefinite." Rather, Applicant submits the apparent "definiteness" with which the Examiner considered such aspect during the preparation of the previous three Office actions remains unchanged. Moreover, Applicant submits claim 1 is entitled to its broadest reasonable interpretation as per MPEP § 2111. Therefore, Applicant submits claim 1 is in condition for allowance.

Regarding claim 5, the Examiner states, "it is unclear whether 'the differentiated service profile' in line 3 is the second differentiated service profile because claim 5 recites 'the second service interface' in line 1 and the second service interface is associated with the second differentiated service

profile, not 'the differentiated service profile.'" Applicant notes claim 5 recites "...wherein the second service interface assigns a fifth data packet having the first differentiated service codepoint value to the second transport interface according to the differentiated service profile." Applicant notes there is antecedent basis for "...the differentiated service profile" in claim 1, line 5. Therefore, Applicant submits claim 5 is in condition for allowance.

The Examiner has rejected claims 19, 20 and 26, 27 under 35 U.S.C. §102(e) as allegedly being anticipated by Kuykendall, Jr. (US Publication No. US 2002/0181044). Applicant respectfully disagrees.

The Examiner previously stated, under the heading "Allowable Subject Matter," claims 3-5, 12-17, 19, 20-25, 26, and 27-33 would be in condition for allowance if rewritten to include the limitations of their base claims and any intervening claims. Applicant notes Applicant amended claims from which such claims depend so as to present claims including the limitations of base claims and any intervening claims. However, the Examiner now states, "The allowability of claims 19-33 have been withdrawn." Applicant notes MPEP § 706.04 states as follows:

706.04 Rejection of Previously Allowed Claims [R-1]

A claim noted as allowable shall thereafter be rejected only after the proposed rejection has been submitted to the primary examiner for consideration of all the facts and approval of the proposed action.

Great care should be exercised in authorizing such a rejection. See *Ex parte Grier*, 1923 C.D. 27, 309 O.G. 223 (Comm'r Pat. 1923); *Ex parte Hay*, 1909 C.D. 18, 139 O.G. 197 (Comm'r Pat. 1909).

PREVIOUS ACTION BY DIFFERENT EXAMINER

Full faith and credit should be given to the search and action of a previous examiner unless there is a clear error in the previous action or knowledge of other prior art. In general, an examiner should not take an entirely new approach or attempt to reorient the point of view of a previous examiner, or make a new search in the mere hope of finding something. >*Amgen, Inc. v. Hoechst Marion Roussel, Inc.*, 126 F. Supp. 2d 69, 139, 57 USPQ2d 1449, 1499-50 (D. Mass. 2001).<

Because it is unusual to reject a previously allowed claim, the examiner should point out in his or her office action that the claim now being rejected was previously allowed by using Form Paragraph 7.50.

¶ 7.50 Claims Previously Allowed, Now Rejected, New Art

The indicated allowability of claim [1] is withdrawn in view of the newly discovered reference(s) to [2]. Rejection(s) based on the newly cited reference(s) follow.

Examiner Note

1. In bracket 2, insert the name(s) of the newly discovered reference.
2. Any action including this form paragraph requires the signature of a Primary Examiner. MPEP § 1004.

Applicant sees no basis in MPEP § 706.04 for the assertion of a non-art rejection of previously allowed claims. Moreover, Applicant does not see Form Paragraph 7.50 or any indication that "great care" was "exercised in authorizing such a rejection." Thus, Applicant respectfully requests the rejection of claims 19-33 be withdrawn.

Regarding claims 19 and 26, Applicant submits the cited portions of the cited reference fail to disclose or suggest the subject matter of claims 19 and 26. As one example, Applicant submits the cited portions of the cited reference fail to disclose or suggest "...wherein the classes of service of the subsets of the data packets carried by the transport interfaces are unique to each of the transport interfaces." While the Examiner cites "(circuit switched, IP telephone, ISP backbone, CATV, 19-22 in Fig. 4)," Applicant submits Fig. 4 does not illustrate, for example, "...the classes of service of the subsets of the data packets...." Moreover, Applicant submits the description of "FIG. 4" in paragraph [0087] of the specification of the cited reference appears to fail to describe elements 19, 21, and 22. To the extent "the IP based telephone networks 20" is mentioned, Applicant submits such reference pertains to "networks" and does not disclose or suggest a class of service. Thus, Applicant submits the Examiner has not made a *prima facie* showing of obviousness, as per MPEP § 2143. Therefore, Applicant submits claims 19 and 26 are in condition for allowance.

Regarding claims 20 and 27, Applicant submits the cited portions of the cited reference fail to disclose or suggest the subject matter of claims 20 and 27. As one example, Applicant submits the cited portions of the cited reference fail to disclose or suggest "...wherein the transport interfaces are operably coupled to the service interface in bundles, each bundle having exactly one of the transport interface for each of the classes of service." While the Examiner cites "(circuit switched, IP telephone, ISP backbone, CATV, 19-22 in Fig. 4)" as allegedly disclosing "each bundle having exactly one of the transport interfaces for each of the classes of service," Applicant submits Fig. 4 does not illustrate, for example, "...the classes of service." Moreover, Applicant submits the description of "FIG. 4" in paragraph [0087] of the specification of the cited reference appears to fail to describe elements 19, 21, and 22. To the extent "the IP based telephone networks 20" is mentioned, Applicant submits such reference pertains to "networks" and does not disclose or suggest a class of service. Thus, Applicant

submits the Examiner has not made a *prima facie* showing of obviousness, as per MPEP § 2143. Therefore, Applicant submits claims 20 and 27 are in condition for allowance.

In conclusion, Applicant has overcome all of the Office's rejections, and early notice of allowance to this effect is earnestly solicited. If, for any reason, the Office is unable to allow the Application on the next Office Action, and believes a telephone interview would be helpful, the Examiner is respectfully requested to contact the undersigned attorney.

Respectfully submitted,

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Date



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